IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11047 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M H JADEJA

Versus

ADDITIONAL CHIEF SECRETARY

Appearance:

1. Special Civil Application No. 11047 of 2001

M/S THAKKAR ASSOC. for Petitioners No. 1-15

MR SN SHELAT, ADVOCATE GENERAL, with MR P.R. ABICHANDANI, AGP, for Respondents Nos. 1 to 3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 28/11/2001

ORAL JUDGEMENT

The question which has been involved in this petition is with regard to preparation of seniority list

of the Deputy Mamlatdars who are working in District Jamnagar.

2. Brief facts necessary for the purpose of disposal of this petition are as under :

3. The post of Dy. Mamlatdar is a District level post and the promotional post, which is that of the Mamlatdar, is a State level post. Upon being promoted to the post of Mamlatdar, an employee can be transferred anywhere in the State of Gujarat whereas a Deputy Mamlatdar is normally transferred within the District. It is therefore necessary to have a consolidated list of Deputy Mamlatdars working in the State in different districts. For that purpose, seniority lists of Deputy Mamlatdars working in different districts are considered and thereafter a consolidated seniority list of the Deputy Mamlatdars working in the State is prepared.

4. In the process of preparing a State level seniority list of the Deputy Mamlatdars, provisional seniority list of the Deputy Mamlatdars working in Jamnagar District has been prepared on 23.1.2001.

5. The grievance which has been ventilated by the petitioners in this petition is that the said list is likely to be changed in pursuance of directions given by the State of Gujarat under its letter dated 23.7.2001 (Annexure E). It has been submitted by learned advocate Mrs. Pahwa appearing for the petitioners that once the provisional seniority list of the promotee Deputy Mamlatdars in Jamnagar District had been prepared, it was not necessary for the State of Gujarat to give any direction or guidelines to the Collector with regard to preparation of the seniority list of the Deputy Mamlatdars. According to her, the direction or guidelines have been given under letter dated 23.7.2001 with an oblique motive of giving benefit to some direct recruits. It has been submitted by her that the seniority list which has already been prepared is on the basis of an earlier seniority list of the Deputy Mamlatdars which had been finalised and, therefore, there is no reason to make any change in the said list. She has made several other submissions so as to show that the guidelines given by the Government under letter dated 23.7.2001 were not at all required.

6. On the other hand, learned Advocate General Shri Shelat has submitted that the petition is premature for the reason that if any change is likely to be made by the Collector, Jamnagar, in the seniority list of the

promotee Deputy Mamlatdars, the Collector, Jamnagar, will invite objections from the persons who are likely to be adversely affected and before making any change in the seniority list the concerned persons shall be heard.

7. It has been thereafter submitted that after making changes in the list, if any, the said list shall be incorporated in the State level seniority list of the Deputy Mamlatdars. Before finalising the seniority list of the Deputy Mamlatdars working at State level, objections would be invited and it would be open to the petitioners to raise their objections even at that stage. So, in a nutshell, it has been submitted by him that the petition is premature and if any change is made in the seniority list of the promotee Deputy Mamlatdars, the proposed change would be finalised only after considering the objections of the petitioners or other concerned persons.

8. I have heard the learned advocates at length. Looking to the facts of the case, in my opinion, this court should not go into the objections raised by the petitioners in the petition for the simple reason that the Collector, Jamnagar, is surely to hear the concerned aggrieved persons, if any change is likely to be made in the seniority list which is at Page 40 of the petition (Annexure C).

9. It is also pertinent to note that ultimately at the time of consolidation of seniority list of different districts, the State might have to invite objections from the Deputy Mamlatdars of other districts. So far as the Deputy Mamlatdars of District Jamnagar are concerned, the list published on 23.1.2001 might be final, but a Deputy Mamlatdar performing his duties in a different district might object to the said list and in that event it would become obligatory on the part of the government to hear the concerned Deputy Mamlatdars and consider the objections which might be received. The seniority list of the Deputy Mamlatdars, which might be final so far as a particular district is concerned, would not be final, when you consider the said list from the point of view of the State as a whole because the State of Gujarat has to consolidate all the seniority lists of the Deputy Mamlatdars working in different districts. For the aforesaid reasons, it cannot be said that the seniority list of the Deputy Mamlatdars, which has been prepared by the Collector, Jamnagar, has already become final.

10. The petitioners have been aggrieved by the instructions given by the State of Gujarat under its

letter dated 23.7.2001. The instructions or guidelines which have been given in the said letter are general in nature. The said instructions/guidelines have been given to all the district collectors. It appears that some of the Collectors, in the process of preparing seniority lists of Deputy Mamlatdars, might have made some mistakes which might have come to the notice of the Government and, therefore, for the sake of abundant caution, certain instructions must have been given to all the Collectors so that the Collectors, who had not considered the points stated in the said letter, can take care while preparing or finalising the seniority list of the respective districts.

11. The submission of learned advocate Ms. Pahwa that such instructions could not have been given because the seniority list of the Deputy Mamlatdars working in district Jamnagar had become final is absolutely misplaced because the said instructions have not been given specifically to the Collector, Jamnagar. The apprehension of the learned advocate for the petitioners that the seniority list of the Deputy Mamlatdars prepared by the Collector, Jamnagar, will surely be changed is also not proper for the reason that if the seniority list has already been prepared after considering all the relevant factors, which have been included in the letter dated 23.7.2001, the Collector, Jamnagar, would not make any change in the seniority list which has already been prepared by him. If, by chance, the Collector, Jamnagar had not considered some of the relevant factors while preparing the seniority list of the Deputy Mamlatdars and if now he realises his mistake, he will have to invite objections before making any change in the seniority list. In that event, the petitioners shall get an opportunity to make a representation or file their objections before the Collector, Jamnagar. Thus, in my opinion, the apprehension of learned advocate Ms. Pahwa that the Collector, Jamnagar, shall make changes in the seniority list of the Deputy Mamlatdars without considering their objections, which might be raised by the concerned petitioners, is not well-founded.

12. It is also pertinent to note that the learned Advocate General appearing with learned AGP Shri P.R. Abichandani has submitted that so far as district Jamnagar is concerned, the Collector, Jamnagar, has already prepared provisional seniority list of the Deputy Mamlatdars and the said list has been published on 5.11.2001. The Collector, Jamnagar, had invited objections and he has also received some objections which are pending for his consideration. The learned Advocate

General has assured this court that before finalising the said seniority list, the objections which have been received by the Collector, Jamnagar, shall be scrutinised. I am sure that the Collector, Jamnagar, will look into all the objections objectively and only after considering all the objections, he shall finalise the seniority list. Thus, it is very clear that at this stage, even the seniority list of the Deputy Mamlatdars of District Jamnagar has not become final and, therefore, it would not be proper on the part of the petitioners to make any grievance with regard to the seniority list of the Deputy Malatdars published on 5.11.2001.

13. From the facts stated hereinabove, it is crystal clear that the petition is premature at this stage and, therefore, it cannot be entertained. It is also pertinent to note that this court had given direction to the State of Gujarat by its order dated 14.9.2001 in M.C.A no. 1289 of 2001 in M.C.A. No. 1017 of 2001 in Special Civil Application No. 8378 of 2001 to the effect that the State of Gujarat should prepare a State level provisional seniority list of Deputy Mamlatdars on or before 31.12.2001. It has been submitted by the learned Advocate General that while giving such a direction, this court had clarified in the said M.C.A. that in no circumstances, further extension should be asked for and even if asked for, it would not be granted. In these set of circumstances, it would not be just and proper to restrain the respondent authorities from proceeding further in the process of finalisation of the State level provisional seniority list of the Deputy Mamlatdars.

14. In the circumstances, the petition is rejected. Notice is discharged. Ex-parte ad-interim relief granted on 23.11.2001 is vacated.

It is however clarified that till the State level provisional seniority list of Deputy Mamlatdars is finalised or till 31.12.2001, the the petitioners shall not be reverted to the post of Deputy Mamlatdars as stated in the order of promotion given to the petitioners.

(A.R. Dave, J.)

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